

Green, LindaE

From: Levine, Scott on behalf of OIG FOIA
Sent: Tuesday, June 23, 2015 5:58 PM
To: FOIA HQ
Subject: FW: FOIA Request

From: Jeff Ruch
Sent: Monday, June 22, 2015 10:01:07 AM (UTC-05:00) Eastern Time (US & Canada)
To: OIG FOIA
Subject: FOIA Request

June 22, 2015

FOIA Officer
EPA OIG
1200 Pennsylvania Avenue, NW
Mail Code 2411T
Washington, DC 20460-0001

OIG_FOIA@epa.gov

RE: FREEDON OF INFORMATION ACT REQUEST
VIA U.S. MAIL, FAX & EMAIL

Dear FOIA Officer:

At a House Government Oversight and Reform Committee meeting held on March 4, 2015, U.S. Chemical Safety and Hazard Investigation Board (CSB) General Counsel Richard Loeb personally delivered to U.S. Environmental Protection Agency (EPA-OIG) Deputy General Counsel Eric Hanger a packet of information. That packet consisted of –

- A copy of the March 2, 2015 letter from CSB Chairman Rafael Moure-Eraso to EPA Inspector General Arthur Elkins revealing the results of an internal CSB review of personal e-mail use by CSB staff to conduct official business; and

- Copies of approximately 472 printed pages of e-mails sent from non-CSB accounts by CSB personal in which CSB business was conducted. These e-mails covered the period of approximately October 2011 to March 2014 to among others, White House and Congressional staff, as well as labor union officials, and other interested stakeholders in the work of the CSB. Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests records reflecting what actions EPA-OIG took in response to the above-listed information. Specifically, we request records containing the following:

1. A copy of the packet of materials (both the letter and print-out of emails) Mr. Loeb handed to the EPA-OIG Deputy General Counsel;

2. Any decision memos of a decision to conduct or to not conduct an inquiry into the referenced materials;
3. Any report of investigation or other review of the subject matter of the material conducted by EPA-OIG not already published; and
4. Any communications after March 1, 2015 between EPA-OIG personnel and any outside or non-OIG party concerning the subject matter of this packet from the CSB Chair.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen* (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA-OIG needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552(a)(4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA-OIG and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material concerns whether a documented request from a high government official concerning conduct by CSB officials, including board members, was acted upon or ignored – and if the latter, what was the stated reason.

These emails would also reveal to the public how the “real” business of the CSB was conducted, especially as it concerns transactions of official business not heretofore on the public record. This material would be most revealing to the general public.

This request targets the most informative records that would enable the public to grasp how potentially serious ethical breaches were handled. As such, the requested records are the most meaningful documents that could be requested on this topic.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested records document apparently extensive personal e-mail use by CSB staff to conduct official business. The records would reveal if the EPA-OIG investigated all such personal use or only the personal communications of selected individuals mentioned in publicly issued reports.

Thus, this material will shed light on whether the EPA-OIG has acted in an impartial or in a politicized manner in following up on this information. The general public has a keen interest in any information reflecting on the integrity and thoroughness of a designated oversight agency such as EPA-OIG.

In addition, the materials reflect transactions that CSB officials possibly sought to shield from public examination. The public has an acute interest in government transparency.

Finally, the materials may yield records of improper communications to and from CSB officials which may indicate political or other non-official motives behind official acts. The public has a significant interest in any matters affecting how CSB executes its serious public safety responsibilities, especially any matter that increases the jeopardy of workers and communities surrounding these refineries, factories and other fixed industrial facilities.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on our web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER’s newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these techniques, PEER has a long track record of generating media and public attention concerning the operations of federal agencies, including EPA-OIG. Moreover, by its own reports concerning the topic of this request we presume that the EPA-OIG would concede the public interest of this request’s subject matter.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

The requested material will significantly inform the general public about whether reports of potential violations of federal record laws or bans on ex parte communications were actually

investigated by the responsible with jurisdiction to do so – EPA-OIG. Presumably the material will provide the public with explicit and easily understandable information about precisely how EPA-OIG follows up on credible, detailed violations received from a high-ranking official.

Moreover, if EPA-OIG did not inquire into the allegations, the records reflecting that decision will help the public better grasp the priorities of this entity.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Cordially,

Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility (PEER)
2000 P Street, NW Suite 240
Washington, DC 20036
Tel: (202) 265-7337; Fax: (202) 265-4192
Website: www.peer.org